Decision **DRAFT DECISION OF ALJ SIMON (Mailed 11/23/2004)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for the Purpose of Amending the Rules of Practice and Procedure to Include the Use of Electronic Mail to Serve Documents in Formal Proceedings before the Commission.	Rulemaking 04-01-005 (Filed January 8, 2004)

OPINION ADOPTING RULES

1. Summary

In this order, we adopt revisions to the Rules of Practice and Procedure (Title 20, Division 1, Chapter 1 of the California Code of Regulations)[1] to allow, but not require, the routine use of electronic mail (e-mail) and posting on sites on the world wide web (web) to serve documents in Commission formal proceedings. In so doing, we make major changes to Article 2 of the Rules and minor changes to a number of other rules related to service of documents, in order to enhance compatibility with the new rules and to remove existing inconsistencies.

2. Procedural Background

The Order Instituting Rulemaking (OIR) was issued January 8, 2004. In accordance with the schedule set in the OIR, comments were filed February 27,

[1] Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure and citations to sections refer to the Public Utilities Code.

2004 and reply comments were filed March 15, 2004. Pursuant to the Administrative Law Judge's (ALJ) Ruling Setting Workshop (May 6, 2004), a workshop for discussion of the proposed revisions was held at the Commission's office in San Francisco on May 25, 2004. At the workshop, it became clear that the Commission would benefit from further comment on the issues related to proposed Rule 2.3.1(e), covering failure of e-mail service. Additional comments pursuant to the ALJ Ruling Requesting Additional Comments (June 9, 2004) were filed June 25, 2004.[2] As we stated in the OIR, it was not necessary to hold a public hearing. Revisions to the initial proposed rules appended to the OIR are attached as Appendix B. No revisions have been made to any initially proposed rules other than those in Appendix B. The draft decision serves as the notice of proposed changes and the final decision serves as the final statement of reasons required by the Administrative Procedure Act, Govt. Code section 11340 *et seq.*

3. Discussion and Response to Comments

Commenters generally supported the proposal to make e-mail more useful and more used in the service of documents in formal proceedings before the Commission, believing that it would make our proceedings more efficient and more accessible. They made detailed suggestions for improving particular aspects of the rules. On some issues, commenters offered opposing views. Because many commenters addressed the same topics and often made very similar suggestions, we group the topics in our discussion.

[2] A list of commenters is attached as Appendix A.

3.1 Filing

Several commenters suggested that a unified system of electronic filing and service would better meet the needs of the Commission and outside parties. We noted in the OIR that such a system is beyond our current resources, and thus outside the scope of this rulemaking. Nothing in the comments submitted persuades us that a system of electronic filing would be feasible at this time, given the limits on our resources. We agree with the commenters who stated that the Commission should continue to explore the possibility of developing an electronic filing system.

One commenter proposed, as an interim measure, that in major proceedings (*e.g.*, general rate cases), the utility could be required to set up a web site on which all documents would be posted. A number of utilities objected to this idea. They pointed out that, among other things, the utilities would be burdened with setting up the web site, guaranteeing the authenticity of documents posted, and managing the confidentiality of documents. We do not adopt this suggestion. We are reluctant to adopt a rule that would require a potentially unwilling party to manage the document collection and posting for all parties in a complex proceeding. In any proceeding in which it appears useful to do so and the parties agree, the ALJ has authority to implement such a plan.

Some commenting organizations that do not have offices in San Francisco, Los Angeles, or San Diego, where we have offices that accept filings from parties, suggested that parties serving documents by e-mail on the due date should be allowed to file the documents on the following day, creating parity with parties able to file documents in our offices on the due date. Although we recognize the commenters' concern, we will not make this change. The parameters of this rulemaking do not include making changes to our rules governing filing of

documents. Even if we were to consider making changes to filing rules in this proceeding, we are unwilling to make a special geographically based rule for some litigants. On the other hand, as other commenters note, allowing *any* party serving documents by e-mail to file later would eviscerate our filing rules. ALJs have authority, under Rule 48, to extend deadlines for filing (other than those set by statute). If a party requests such an arrangement, the ALJ can consider whether it is appropriate in a particular proceeding and make any necessary accommodations.

3.2 Definition of "Document"

Many commenters were concerned about the use of the term "document" in the proposed rules, requesting clarification or new wording. This difficulty apparently arises from the now nearly ubiquitous use of the word "document" to refer to any separately named item produced using a word processing or spreadsheet program. For example, a table of contents is often produced as a separately word processed "document." In addition, some participants in our proceedings create separate "chapters" of a submission, and serve them separately, raising the question of what constitutes the document being served.

The term "document" is used throughout the existing rules. We are reluctant to create a special definition of the term for purposes of e-mail service, because there is no practical way to confine such a definition. In Article 2 itself, the rules for service and filing of documents are intertwined; a change in the definition for one requires wholesale changes in the other. It is, however, feasible to revise proposed rules 2.3(d)(1), (3) and 2.3.1(b) to add the word "entire" before "document," to convey that parts of one whole should be put together as the whole prior to service. If the formats of a document differ (e.g.

text and spreadsheet exhibit), they may be attached to the same e-mail, as revised Rule 2.3.1(c) now allows.

3.3 Rule 2.3

Rule 2.3(a)

Comments on Rule 2.3.1(e), which also suggest changes to Rule 2.3(a), are discussed in Section 3.4. No changes were made to the initially proposed Rule 2.3(a).

Rule 2.3(b)

No comments were received on this rule.

Rule 2.3(c)

Commenters noted that the content and uniformity of information conveyed in the subject line of an e-mail message to which a Notice of Availability is attached would enhance the utility of service of a Notice of Availability by e-mail. We have therefore specified the order of the items to be included in the subject line, and added a requirement that the subject line include a brief name of the proceeding in which the document is being served. This change applies both to e-mails transmitting a Notice of Availability and to e-mails attaching the document to be served (Rule 2.3.1(c)).

Some commenters proposed an expansion of the use of the Notice of Availability to allow parties to file a Notice of Availability with the Docket Office when they serve documents that are not subject to filing (for example, written testimony). The filed Notice of Availability would then be posted in the Proceedings section of the Commission's web site, and parties could use this

listing to check that they had received all served documents.[3] This proposal would create additional work for Commission staff and, contrary to the intention of the commenters, additional uncertainty for the parties. This suggestion would break the existing connection between a filed Notice of Availability and a filed document (see renumbered Rule 2.3 (f)), giving Commission staff no way to confirm the information in the Notice of Availability. It would increase the number of documents for Docket Office staff to process, especially in large proceedings that produce a blizzard of served documents in a short period of time. The number of documents to be posted quickly on the Commission's web site would similarly increase, with the attendant increased risks of error in recording and posting.

We conclude that the costs in Commission staff time and the introduction of a source of unreliability to the Commission's web site outweigh the potential advantage to parties who may be able to pick up an occasional service failure by this method. We do not adopt this suggestion. We delete the "and file" language from the proposed Rule 2.3(c) and Rule 2.3(d), since the revised rules allow no circumstances in which a Notice of Availability would be separately filed, rather than attached to the filed document (see Rule 2.3(g)).

Rule 2.3(d)

Commenters identified a lack of clarity in the list of circumstances under which a Notice of Availability may be used. We have added clarifying language, including "or" between the numbered clauses of Rule 2.3(d). We have

[3] One commenter proposed an elaboration of this idea, suggesting that the Commission include hyperlinks to the filer's web site in the Proceedings listing of documents.

responded to concerns raised about the term "document," as noted in Section 3.2, by adding "entire" before "document."

Subdivision (2) has been rewritten to reflect the changes to the rules for serving a document by attaching it to an e-mail message set out in Rule 2.3.1(c) and discussed in section 3.4.

Rule 2.3(e)

Service by posting the document to be served on a web site is generally supported by the commenters. Web posting of documents eliminates the need for copying and mailing paper copies and avoids the difficulties that may be associated with attaching documents to e-mails.

The provisions of Rules 2.3(c) and (d) allowing the service of a Notice of Availability to notify parties that a document is being served by posting it on a web site at a particular Uniform Resource Locator (URL) designation have been rewritten in response to comments. Some commenters noted that the original wording allowed the serving party to designate the URL for the web site, rather than the URL for the document, in the Notice of Availability; we have corrected this in new Rule 2.3(e). We have also placed the requirements for the text of a Notice of Availability for web-posted documents in this section.

As discussed in section 3.4, we have revised Rule 2.3.1(c) to include functional characteristics that documents served as attachments to e-mail messages must be "readable, downloadable, printable, and searchable," unless it is infeasible. For consistency, we have required those functional characteristics for web-posted documents as well. We recognize that the issues of feasibility are not identical for web-posted documents and e-mail attachments, but expect that experience with the new rules will enable parties to provide efficient and

accessible web postings. Problems with web-posted documents, like other service problems, can be addressed by the ALJ in particular proceedings.

Some commenters believe that serving a Notice of Availability for web-posted documents is unnecessarily awkward, and suggested that the rules should expressly provide that recipients could be notified of web-posted documents by a simple e-mail message incorporating a hyperlink to the document's URL. We do not adopt this suggestion. For documents that are to be filed with the Docket Office, as noted above, a complete Notice of Availability, sent by e-mail or U.S. mail, is the connection between the served and the filed document. Filing of the Notice of Availability with the hard copy of the web-posted document is the only currently available way to ensure that the Commission has a record of the web-posted service of the filed document. For documents that are to be served but not filed, as discussed in section 3.4, we believe that serving a Notice of Availability rather than merely sending an e-mail incorporates important safeguards that we wish to maintain. In addition, the use of the Notice of Availability protects participants with dial-up internet connections or limited web access by allowing the recipient to request a paper copy of the document.

Rule 2.3(f)

In new Rule 2.3(f), we incorporate other suggestions to increase the reliability of web-posted service. To ensure that a document served by being posted on the web can continue to be found over time, the new rule provides that if the serving party moves the served document to a new URL, the serving party must serve and file a notice of the new URL. Some commenters noted that a document posted on the web may be changed, updated, or removed by the serving party during a proceeding, leading to questions about the reliability of a

web-posted document. Other commenters suggested that having an updated document posted on the web during a proceeding would be helpful to parties. Other comments stated that it would be too burdensome for the serving party to keep a document unchanged on its web site during the life of a proceeding, and that recipients should be responsible for promptly printing the served document.

It is important to preserve the integrity of the served document in web-posted service, just as in other forms. New parties joining a proceeding after the initial service of the document should be able to find it, as originally served, on the serving party's web site. Any party, as well as the Commission, should be able to review the document as a proceeding continues. Maintaining the document on the web site during the course of the proceeding is a small price for the serving party to pay in return for the convenience and cost savings of eliminating paper service copies and e-mail attachment problems. We therefore provide that the serving party must retain the document posted on the web site in its original form, until the Commission's decision in the proceeding is no longer subject to judicial review. (Cf. Rule 2.2 on retention of original signature pages.).

Rule 2.3(g)

This rule has been renumbered from (e) to (g). No comments were received on it.

Rule 2.3(h)

This rule has been renumbered from (f) to (h). Two issues raised by commenters are addressed in the revisions. First, many commenters noted that a significant source of e-mail service failure (see Rule 2.3.1(e)) was out-of-date e-mail addresses for recipients. The initial revision of Rule 2.3(f), now Rule 2.3(h), clearly placed the burden on participants to provide current information,

including e-mail addresses, to the Process Office. We have added a burden on the Process Office to update service lists and post them on the Commission's web site more quickly than has been our practice, to give serving parties access to the most current and accurate address information, including e-mail addresses, made available to the Commission. We urge all participants in our proceedings to contribute to the accuracy of service lists by informing the Process Office of errors in posted service lists.

The second issue derives from the nature of an e-mail address. With respect both to this rule and to Rules 2.3.1(b) and (d), commenters found ambiguity in the use of the terms "party," "person," and "entity" in the context of e-mail addresses. Almost all e-mail addresses are specific to an individual (for example, Carla.Counsel@Utility.com). More than one person may be associated with the same corporate or associational entity, and each person will have an individual e-mail address. The entity, not the persons, is the party, but the persons, not the entity, typically have e-mail addresses. We have responded to this concern by rephrasing the rules to use "person." By making this change, we do not intend to preclude participants from supplying non-personal e-mail addresses for case management purposes in particular proceedings, but leave to the ALJ management of any service list issues in such cases.

We decline the invitation of some commenters to use these rules revisions to comment on the rights of different groups of participants in our proceedings. This request arises out of concerns about the scope of the serving party's obligations if e-mail service fails. We have addressed the cause of this concern in our revisions to Rule 2.3.1(e), as explained below. We therefore see no reason to add extraneous discussion of parties' status to these rules.

Rule 2.3(i)

No comments were received on this rule, renumbered from 2.3(g).

Rule 2.3(j)

No comments were received on this rule, renumbered from 2.3(h).

3.3.1 Rule 2.3.1

One commenter suggested that e-mail service be designated the preferred method of service. We see no reason to do so. The introduction of e-mail service as part of our rules will require a period of adjustment by all participants in our proceedings. Commenters have noted the potential benefits of e-mail service. If e-mail service is truly useful, it will develop into a common method of service.

We also see no need to adopt a rule on e-mail signatures or more generally, signatures for documents served by e-mail, as suggested by one commenter. Documents that are served and filed will have the original signed document on file with the Docket Office. For all documents, the recipient will be able to verify the sender's e-mail address by referring to the official service list. We do not anticipate the need for any greater level of specificity or security about signatures on e-mailed documents.

Rule 2.3.1(a)

One commenter interpreted this rule as requiring that all documents served outside the context of a formal proceeding should be served by U.S. mail and supported the proposal on that basis. Since the Rules of Practice and Procedure as a whole only apply to formal proceedings, this interpretation is unwarranted. The revised rules do not apply in any context in which the existing rules do not apply, and no inferences should be drawn about any other context.

Rule 2.3.1(b)

As noted in section 3.3, the term "document" has been clarified by prefacing it with "entire." The phrase "any person or entity" has been changed to "all persons," for the reasons discussed in the section on Rule 2.3(h), above.

In response to comments pointing out that entries on the service list change through time, we have added the phrase "on the date of service" to clarify which version of the service list should be used. This will enable serving parties to rely on those e-mail addresses as the most current, though it will not, as discussed in relation to Rule 2.3.1(e), allow serving parties to avoid any obligation to follow up on e-mail service failures.

We decline to adopt the suggestion that the rules should allow notice of service by posting the document at a particular URL to be sent by an e-mail message with a hyperlink to the URL. The formality and specificity of the Notice of Availability, whether sent by mail or by e-mail, increase our confidence that the serving party will properly describe what is being served and that the recipient will understand what is being served. Compare Rule 2.3(e) with an e-mail message saying "doc/12345@site.com." The Notice of Availability must be filed with a document that is served and filed, but should not be filed for documents that are only served, not filed. See Rule 2.3(g).

2.3.1(c)

This rule has several parts and received extensive comment. One issue is how to ensure that documents served as attachments to e-mail messages were not too large for recipients to manage received much comment. The commenters unanimously criticized the original proposal to allow only one attachment per e-mail message, noting that it would cause an unnecessary increase in e-mail messages and would encourage served documents to be broken down into parts,

contrary to our emphasis on service of entire documents. As we noted in the OIR, any limit on the size of e-mail attachments is arbitrary, but we conclude one is necessary. Most e-mail systems, including the Commission's, have limits on the size of incoming messages. The rules should have a limit that will allow most messages to get through most systems. After considering comments and the discussion at the workshop, as well as our own system limitations, we have set a size limit of 3.5 megabytes for the e-mail message and all attachments. This should allow service of most documents with one e-mail message, even if it is divided into parts (*e.g.*, text and spreadsheet exhibits). In response to several comments noting recipients' frequent difficulty in determining whether documents will be served by multiple e-mails, we have added a requirement that the text of the e-mail message indicate whether it is one of multiple e-mail messages to which the served materials are being attached.

The size limitation is related to the most hotly debated topic among commenters: the format of documents served as attachments to e-mails. Some commenters wanted certain formats to be mandated; others wanted some formats to be prohibited. The issue boils down to striking an appropriate balance between the integrity of documents served and ease of accessing and using the documents served.

Word processed documents are generally relatively small in megabytes, and easy to e-mail and open. Word processing programs are almost universal. These elements led some commenters to suggest that we require service of documents in word processed format. Some commenters noted, however, that a word processed document carries "metadata"—information about the document, including its editing history. This information can be removed by a special program prior to serving the document, but there is always the risk that a

document would be served without removal of metadata, or that the serving party has not obtained a program for metadata removal.

On the opposite end of the spectrum are documents served after being scanned into PDF format.[4] Scanned PDF documents are relatively large in megabytes. They are also relatively unfriendly to users, sacrificing the search and editing capacity of word processed documents. By the same token, documents scanned into PDF format are secure because the scanned image cannot be altered by the recipient. Occupying the middle ground are documents directly converted into PDF format from the format in which they were created. They no longer carry word processing baggage, but may be searched.

We adhere to our initial view that we should not prescribe particular formats. In response to widespread concern among commenters that a *laissez faire* approach could lead to documents served by e-mail becoming harder rather than easier for recipients to use, we have expanded our approach to mandate certain functionalities for documents served as e-mail attachments. The documents must be in formats that allow the documents to be "readable, downloadable, printable, and searchable," unless that is infeasible. (Rule 2.3.1(c).[5] In practice, word processed documents, some spreadsheets, and directly converted PDF documents are most likely to meet these criteria. There are circumstances in which documents must be scanned; for example, a

[4] The Adobe PDF format is the only non-word processing format for text or graphics that was seriously discussed in the comments or the workshop. Although PDF readers may be downloaded without charge, the Adobe Acrobat program to put documents into PDF format currently costs more than two hundred dollars.

[5] We have also added this language to Rule 2.3(e) regarding documents posted on web sites.

document that is only available to the serving party in printed form, or certain redacted documents. The 3.5 megabyte limit on e-mail attachments makes it unlikely that complex documents, *e.g.*, large detailed maps, would routinely be served as scanned PDF attachments. In this area, as in others under these rules, problems in particular proceedings can be resolved through a ruling by the ALJ that sets standards and requirements for service of documents that are appropriate to that proceeding.

Rule 2.3.1(d)

Several commenters expressed concern about the inflexibility of the statement in Rule 2.3.1(d) that consent to e-mail service in one Commission proceeding is consent to e-mail service in all proceedings. This statement, more by way of notice than of prescription, is necessitated by the current state of the Commission's technology. Our existing database permanently connects a name with an e-mail address. Thus, a person who does not provide an e-mail address for the service list in a particular proceeding may nevertheless have an e-mail address provided for the service list out of our database. Because we do not have the resources to change our data infrastructure at this time, participants in our proceedings must live with this circumstance. Participants may provide the Process Office with a new e-mail address if the e-mail address in our database is outdated. In order to give all participants the ability to opt out of e-mail service, we have revised the rule so that it clearly allows withdrawal of consent to e-mail service in a particular proceeding. We also make explicit that refusing to consent

to receipt of e-mail service means that the non-consenting participant may not use e-mail to serve other parties.[6]

Rule 2.3.1(e)

Many commenters pointed out that the requirement in Rule 2.3.1(e) of making good failures of e-mail service put a potentially large burden on serving parties, particularly because e-mail service can fail for a variety of reasons.[7] Some commenters proposed to remove this burden by providing that service by e-mail, like service by mail, be complete when the e-mail message is sent by the serving party. (See Rule 2.3(a).) Other commenters amplified this by proposing that the rules provide that the serving party's obligation is complete upon sending an e-mail message to the e-mail addresses listed on the official service list on the day of service.

Although we understand and share this concern, we decline to adopt either version of this suggestion. The commenters agree that, although e-mail technology and internet service providers are increasingly reliable, in the current state of technology, more unforeseen problems may occur with e-mail than with U.S. mail. In addition, some participants in our proceedings, especially individuals and small businesses, often do not have access to the most up-to-date technology or internet services. We have therefore tried to break the e-mail

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[6] One suggestion that full address, telephone, and e-mail address information be provided in the text of the service list posted on the web site, rather than listed in the comma delimited file version, is not feasible under our current database policies. We decline to adopt it, since the comma delimited file is freely available and easy to find when using the service list posted on the web site.

[7] One commenter included a list of 10 failure scenarios.

reliability problem down into parts and address them, rather than creating a blanket "e-mail service is completed when sent to the current service list" rule.

Since we do not prescribe that e-mail service is always complete when the e-mail message is sent, the rules must provide a way to handle the varieties of e-mail service failure. This rule emphasizes *notice* to the serving party that the recipient failed to receive the message or is unable to access an attachment. Whether notice of the failure should be a component of the definition of e-mail service failure was debated by some commenters. We are persuaded that notice should remain an element of the definition, because the rule is not about e-mail service failure in the abstract, but about the serving party's obligation to re-serve the documents to be served.

Commenters also expressed concern about what constitutes notice of failure of e-mail service. As technology changes, recipients' ability to access documents served by e-mail will also change in ways that cannot be foreseen today.[8] We are skeptical that a foolproof definition of failure can be developed, since none emerged out of all the comments and workshop discussion in this proceeding. We therefore maintain the definition originally proposed in Rule 2.3.1(e), which expresses the circumstances we believe are most common and emphasizes whether the recipient is *unable* to access the served document, rather than whether the recipient has actually accessed it. For example, an e-mail message serving attached documents is received in the in-box of a recipient who is out of town, and the recipient's system sends an automatic "I am away until

[8] The use of handheld devices, noted by one commenter, may today cause rejection of a large documentary attachment. In two years, such devices may manage large documents smoothly.

January 2" e-mail response to the serving party. This is not a failure of service: the message was received at the recipient's e-mail address, the serving party has received no notice that the recipient cannot open an attachment, and being out of town does not constitute "inability" to access the served document. If, on returning, the recipient notifies the sender that an attachment cannot be opened, the "failure" rule would apply.

A significant source of concern to commenters was how quickly the serving party must re-serve a recipient after notice of an e-mail service failure. Commenters noted that the original requirement to "promptly" re-serve gave rise to ambiguity about serving parties' obligations if they received notice of e-mail service failure at the end of a business day, after hours, or over a weekend. Commenters also pointed out that it could take time to resolve the problem that led to e-mail service failure, or to make an arrangement with the recipient for re-service. We must strike a balance between the burden on the serving party and the recipient's need to receive the served documents in a timely fashion. We note that the rule allows wide scope for the serving party and the recipient to make agreements about re-service. We have revised this section to require the serving party to re-serve the documents "no later than the business day after the business day" on which the serving party receives notice of the e-mail service failure.

A few commenters wanted facsimile transmission to be authorized as the automatic method for re-service if e-mail service fails, since the serving party could simply fax the document, without needing to interact with the recipient. We have not adopted this suggestion because it does not give sufficient assurance that the re-service will be successful. A recipient's fax machine is as likely to be overwhelmed by service of a large document, or a series of large documents, as an e-mail in-box. Recipients may agree to re-service by fax, and

thus prepare to receive the relevant facsimile transmission, but serving parties may not automatically use facsimile transmission as a form of re-service.

Commenters agreed that active parties are more likely to keep their e-mail address information current than those merely monitoring proceedings as Information Only participants. Since Rule 2.3.1(b) requires serving parties to serve all persons with e-mail addresses on the service list when using e-mail service, re-serving Information Only participants after e-mail service failure could become a significant burden in large proceedings. After considering the comments and discussion at the workshop, we conclude that the burden of re-serving Information Only participants is potentially too great to require it as a matter of course. We have revised the rule to provide that serving parties are not required to re-serve recipients listed in the Information Only section of the service list for that proceeding, although they may agree to do so.

Rule 2.3.1(f)

No comments were received about this rule.

Rule 2.3.1(g)

No comments were received about this rule. We have decided, however, to revise it to conform to the language in Gov't Code § 11104.5, authorizing administrative agencies to use e-mail unless "contrary to state or federal law."

Rule 2.3.1(h)

No comments were received directly about this rule. See section 3.1 above, for a discussion of electronic filing.

Rule 2.3.1(i)

No comments were received about this rule.

3.5 Other Rules

Rule 8.2

We change references to "mailed" to "served," as a commenter noted.

Rule 17.1

A commenter questioned the minor change in wording about U.S. mail. This change is for consistency with the language of the California Environmental Quality Act, Pub. Res. Code sec. 21000 *et seq.* and the CEQA Guidelines, 20 Cal. Code Regs. sec. 15000 *et seq.* It is made not in relation to service by e-mail, but to improve the consistency of the rules on the general subject of service and notification.

Rule 30

A commenter requested the addition of a sentence emphasizing that the provision of an e-mail address is consent to e-mail service. We conclude that the original wording adequately conveys this, and make no change.

Rules 31, 45, and 51.1

A commenter suggested the elimination of references to Rule 2.3.1 in these rules, since Rule 2.3 encompasses e-mail service. We believe that, since Rule 2.3.1 is new, it should be explicitly mentioned where relevant, and make no change.

Rule 48

We revise this rule to allow requests for extensions of time to be made by e-mail, as a commenter noted.

Rule 82

We have improved the phrasing of this rule in response to a comment. In doing so, we also conform to the language in Gov't Code § 11104.5, authorizing administrative agencies to use e-mail unless it is "contrary to state or federal law."

Forms

A commenter questioned whether the proposed revision to the Certificate of Service (Form 6) would increase work for serving parties by requiring designation of the method of service individually for each party. That is not our intent. The Certificate of Service may indicate, for example, that service was made by e-mail on all parties with e-mail addresses on the attached service list, which is required by Rule 2.3(g).

3.6 No Comments Received

No comments were received on Rules 14.5, 15, and 75. We have corrected an error in the initial revision of Rule 14.5.

We have also made minor revisions for consistency to Rule 1.1 and Rule 2.2. These changes were not proposed in the OIR and were not identified by any commenters.

4. Conclusion

With these revisions, our rules will allow participants in our formal proceedings to utilize more efficient and potentially less costly means of service. By preserving the existing rules governing service by mail and allowing participants to opt out of e-mail service, our rules give a wide array of options for all participants.

The revisions to the rules we adopt will become effective 30 days from the date the Office of Administrative Law files them with the Secretary of State.

5. Comments

In accordance with the requirements of the Government Code, there is a 15-day period for commenting on the revisions to the proposed rules. Comments are due 15 days from the date of service of the draft decision. No reply comments will be allowed.

6. Categorization

In the OIR, this proceeding was preliminarily categorized as quasi-legislative, with no need for a public hearing. These determinations are confirmed.

7. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner. Anne E. Simon is the assigned Administrative Law Judge.

Findings of Fact

1. The revisions to the proposed rules appended to this Order would clarify and regularize practice regarding the use of electronic mail and posting on web sites to serve documents in Commission formal proceedings.

2. The revisions to the proposed rules appended to this Order are substantial and sufficiently related to the initial proposed rules revisions in the OIR.

Conclusions of Law

1. The proposed rules should be sent to the Office of Administrative Law for review.

2. The draft decision is the Notice of Proposed Changes, as required by the Administrative Procedure Act.

3. This order is the Commission's Final Statement of Reasons, as required by the Administrative Procedure Act.

4. In order to complete the adoption process promptly, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Executive Director, in coordination with the Chief Administrative Law Judge, shall send today's decision and all required forms to the Office of Administrative Law in accordance with applicable provisions of the Government Code. For purposes of publishing the appended rules in the California Code of Regulations, the Executive Director is authorized to make nonsubstantive changes to the rules as may be required to prepare them for such publication or to improve the overall clarity, organization, or consistency of the rules.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

LIST OF COMMENTERS

NAME	COMMENTS	REPLY COMMENTS	ADDITIONAL COMMENTS	WORKSHOP	DRAFT DEC.
AT&T	X	X	X	X	
Cox Communications				X	
CUE	X			X	
Ellison, Schneider	X				
Joint Parties	X			X	
MCI (WorldCom)	X	X	X	X	
ORA		X		X	
PG&E	X	X	X	X	
SBC California	X	X	X		
SoCalGas & SDG&E	X	X	X	X	
Edison	X	X	X	X	
Southwest Gas	X				
Steefel, Levitt	X				
SureWest Tel.	X	X	X	X	
Small CLECs	X	X	X	X	
SPRINT				X	
TURN	X				
Verizon	X	X	X	X	

The full names of the commenters are given below.

AT&T Communications of California, Inc.
Coalition of California Utility Employees
Cox Communications, Inc.
Ellison, Schneider & Harris, LLP
Joint Parties: California Farm Bureau Federation, California Manufacturers and Technology Association, California Municipal Utilities Association, Aglet Consumer Alliance, Merced Irrigation District, and McCarthy & Berlin, LLP
MCI, Inc. (formerly WorldCom, Inc.)
Office of Ratepayer Advocates
Pacific Bell Telephone Company, dba SBC California

Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Gas Company
Southern California Edison Company
Southwest Gas Corporation
Sprint Communications Company
Steefel, Levitt & Weiss, P.C.
SureWest Telephone
Small CLECs: Tri-M Communications, Inc. dba TMC Communications; Anew Telecommunications Corp. dba Call America; Sage Telecom; Bullseye Telecom; Navigator Telecommunications
The Utility Reform Network
Verizon California Inc.

(END OF APPENDIX A)

Simon Appendix B Adopting Rules